

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

Bid #L20521
Ordinance # 05-0131
Contract # 56752

AGREEMENT FOR RADIO REPAIR AND MAINTENANCE SERVICES

I. PARTIES

A. Addresses

THIS AGREEMENT FOR RADIO REPAIR AND MAINTENANCE SERVICES
("Agreement") is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and **MOTOROLA, INC.**, ("Contractor"), a Delaware corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

City Purchasing Agent
City of Houston
P.O. Box 1562
Houston, TX 77251

Contractor

Motorola, Inc.
Attn: George M. Ebelt
1140 Cypress Station Drive, Suite 300
Houston, TX 77090
Phone: #281-537-3612
Fax: #281-537-3617

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

TABLE OF CONTENTS

	<u>Page No.</u>
I. PARTIES	1
A. Address	1
B. Table of Contents	2
C. Parts Incorporated	4
D. Controlling Parts	4
E. Signatures	5
II. DEFINITIONS	6
III. DUTIES OF CONTRACTOR	6
A. Scope of Services	6
B. Coordinate Performance	7
C. Reports	7
D. RELEASE	7
E. INDEMNIFICATION	8
F. INDEMNIFICATION PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT	9
G. INDEMNIFICATION - PROCEDURES	10
H. Limitation of Liability	12
I. Insurance	12

J.	Warranties	13
K.	Confidentiality	14
L.	Licenses and Permits	15
M.	Compliance with Laws	15
N.	Compliance with Equal Opportunity Ordinance	15
O.	Drug Abuse Detection and Deterrence	15
IV.	DUTIES OF THE CITY	17
A.	Payment Terms	17
B.	Taxes	19
C.	Method of Payment - Payment for Services	19
D.	Method of Payment - Disputed Payments.	19
E.	Limit of Appropriation	20
V.	TERM AND TERMINATION	21
A.	Contract Term	21
B.	Renewals - Director's Option	21
C.	Termination for Convenience by City	22
D.	Termination for Cause	23
VI.	<u>MISCELLANEOUS PROVISIONS</u>	23
A.	Independent Contractor	23
B.	Force Majeure	24
C.	Severability	24
D.	Entire Agreement	24
E.	Written Agreement	25
F.	Applicable Laws	25
G.	Notices	25
H.	Captions	26

I.	Non-Waiver	26
J.	Inspections and Audits	26
K.	Enforcement	27
L.	Ambiguities	27
M.	Survival	28
N.	Publicity	28
O.	Risk of Loss	28
P.	Parties In Interest	28
Q.	Successors and Assigns	28
R.	Business Structure and Assignments	28
S.	Remedies Cumulative	29

EXHIBITS

- "A" SCOPE OF SERVICES
- "B" CITY OF HOUSTON DEPOT CONTRACT UNIT REPAIR COSTS
- "C" EQUAL EMPLOYMENT OPPORTUNITY
- "D" DRUG POLICY COMPLIANCE AGREEMENT
- "E" DRUG POLICY COMPLIANCE DECLARATION
- "F" CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT

C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

MOTOROLA, INC.

By: [Signature]
Name: Olazaro Escalona
Title: Service Operations Director

ATTEST/SEAL:

By: _____
Corporate Secretary

Tax Identification Number: 36-1115800

APPROVED:

[Signature]
City Purchasing Agent

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney
L.D. File No.0620400911001

CITY OF HOUSTON, TEXAS

By: [Signature]
Mayor

ATTEST:

By: [Signature]
City Secretary

[Signature]
Chief, Houston Police Department

[Signature]
Chief, Houston Fire Department

COUNTERSIGNED:

[Signature]
City Controller

DATE COUNTERSIGNED:

3/17/05

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Director" means the Chief of the Houston Police Department or the Chief of the Houston Fire Department or the person he or she designates.

"Houston Fire Department" (HFD) means the City of Houston's Fire Department.

"Houston Police Department" (HPD) means the City of Houston's Police Department.

"Notice to Proceed" means a written communication from the Director to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"Purchasing Agent" means the City Purchasing Agent or the person he or she designates.

III. DUTIES OF CONTRACTOR

A. Scope of Services

Services in General

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit

“A”.

B. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

C. Reports

Upon request, Contractor shall provide Director with a repair history from the depot.

D. RELEASE

EXCEPT FOR THE CITY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

NOTHING IN THIS RELEASE SHALL AFFECT CONTRACTOR'S RIGHT, IF ANY, TO CONTRIBUTION UNDER SECTION 33.015 OF THE TEXAS CIVIL PRACTICES AND REMEDIES CODE RESULTING FROM AN ACTION BROUGHT BY A THIRD PARTY AGAINST CONTRACTOR IN WHICH IT IS DETERMINED THAT THE NEGLIGENCE OF CONTRACTOR AND CITY BOTH CONTRIBUTED

TO THE INJURY, DAMAGES, ETC. CONTRACTOR'S RIGHT TO CONTRIBUTION FROM THE CITY SHALL BE LIMITED TO THE PROPORTIONAL FAULT ATTRIBUTED TO THE CITY.

E. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY THE 'CITY' HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTERESTS) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT TO THE EXTENT CAUSED BY THE ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF CONTRACTOR AND/OR ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, OR SUBCONTRACTORS, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE.

F. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS AND DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT WITHOUT THE CITY'S PRIOR WRITTEN CONSENT. THE CONSENT SHALL NOT BE WITHHELD IF CONTRACTOR PROVIDES THE CITY ONE OF THE REMEDIES IN THE SUCCEEDING PARAGRAPH.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND

DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

CONTRACTOR WILL HAVE NO LIABILITY WITH RESPECT TO ANY CLAIM OF PATENT OR COPYRIGHT INFRINGEMENT WHICH IS BASED UPON THE COMBINATION OF THE EQUIPMENT OR CONTRACTOR'S SOFTWARE FURNISHED HEREUNDER WITH SOFTWARE, APPARATUS OR DEVICES NOT FURNISHED OR AUTHORIZED BY CONTRACTOR, NOR WILL CONTRACTOR HAVE ANY LIABILITY FOR THE USE OF ANCILLARY EQUIPMENT OR SOFTWARE NOT FURNISHED BY CONTRACTOR WHICH IS ATTACHED TO OR USED IN CONNECTION WITH THE EQUIPMENT. THE FOREGOING STATES THE ENTIRE LIABILITY OF CONTRACTOR WITH RESPECT TO INFRINGEMENT OF PATENTS AND COPYRIGHTS BY THE EQUIPMENT AND CONTRACTOR SOFTWARE OR ANY PARTS THEREOF.

G. INDEMNIFICATION - PROCEDURES

1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and

(c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

H. Limitation of Liability

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Contractor's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of 12 months of service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY CONTRACTOR PURSUANT TO THIS AGREEMENT. No action for the breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one year after the accrual of such cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement.

I. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Workers' Compensation must list the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current

edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Business Automobile Liability insurance
 - \$1,000,000 combined single limit

Aggregate Limits are per 12-month policy period

unless otherwise indicated.

Contractor shall provide a waiver of subrogation for all insurance policies; the waiver of subrogation will be noted on the certificate of insurance. Contractor shall give 30 days written notice to the City before policies may be canceled, materially changed, or nonrenewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be cancelled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

J. Warranties

Contractor warrants that its services under this Agreement will be free of defects in materials and workmanship for a period of 90 days from the date the performance of the services are completed. In the event of a breach of warranty, City's sole remedy is to require Contractor

to re-perform the nonconforming service or to refund, on a pro-rata basis, the fees paid for the nonconforming service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Contractor warrants that Contractor's repair facility is Factory Mutual Certified.

With respect to any parts it furnishes, Contractor warrants:

- (1) that all items are free of defects in title, design, material, and workmanship,
- (2) that Motorola parts or parts of equal quality will be used, in accordance with original equipment manufacturer's specifications, and equipment will be serviced at levels set forth in the manufacturer's product manuals; and
- (3) that no item or its use infringes any patent, copyright, or proprietary right.

K. Confidentiality - Protection of City's Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Agreement will remain Contractor's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at

Contractor's request. City may not disclose, without Contractor's written permission or as required by law, any such information or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Agreement. Contractor will have no obligation to provide City with access to its confidential and proprietary information, including cost and pricing data. The obligations set forth in this Section will survive the expiration or termination of this Agreement.

L. Licenses and Permits

Contractor shall obtain all licenses and permits necessary for it to conduct its business in the State of Texas.

M. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

N. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C".

O. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "E". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

IV. DUTIES OF CITY

A. Payment Terms

City shall pay and Contractor shall accept advance fees in blocks of \$22,500.00 each as the Radio Repair Bank discounted fee for repair services worth \$25,000.00 for repairing HPD radios. The Director, HPD shall pay the first block of \$22,500.00 to Contractor prior to dispatching the first batch of HPD radios for repair. Upon Acceptance (Section III, A(vi & vii)) of the repaired radios by the Director, HPD, Contractor shall set off repair charges for services totaling \$25,000.00 actually provided at the rate of \$305.00 per Spectra Analog Radio repaired at Contractor's depot against each block of \$22,500.00 in fees paid in advance, during the first year of this Agreement. Contractor shall send a monthly statement showing the amount remaining in HPD's advance fee account. When the advance fee in HPD's advance fee account with Contractor falls to \$5,000.00, the Director, HPD shall mail Contractor another block of \$22,500.00 in advance fees before dispatching any more radios for repair. As long as the City pays Radio Repair Bank fees in advance in blocks of \$22,500.00 each, Contractor's fee of \$305.00 per Spectra Analog Radio repaired at Contractor's depot shall remain in effect for the first year of this Agreement as set out in Exhibit "B". Subject to the allocation of funds detailed in Section IV, E and so long as City pays the Radio Repair Bank discounted fee in blocks of \$22,500.00 for repairing Spectra Analog Radios during years two, three, four and five of this Agreement, Contractor shall repair Spectra Analog Radios shipped for repair by the Director, HPD at the unit price listed for each year for such repairs in Exhibit "B".

Contractor and City agree that Radio Repair Bank fee advance payments are being made by City to lock in the 10% discount offered by Contractor on radio repairs when fees are paid in

advance in blocks of \$22,500.00 for radio repair services worth \$25,000.00. The City may audit all payments made to Contractor at a later date. Contractor shall repair radios at the unit prices in force for that year to set off any overpayments uncovered in the audit. If this Agreement is terminated before the end of a period for which payment has been made in advance, Contractor shall repair radios at the unit prices in force for that year for the amount of the City's advance payment for the prepaid amount remaining after termination. These repairs must be made within 60 days of termination of this Agreement.

Contractor shall repair radios and computer parts shipped to Contractor by the Director, HFD only after the Director, HFD accepts Contractor's written report of repairs required after Contractor has examined the radios or computer parts shipped by the Director, HFD as set out in Section B, 1 through 4 of Exhibit "A". In the event the Director, HFD accepts Contractor's written report of what repairs are required and places an order for such repairs to radios or computer parts shipped to Contractor, City shall pay and Contractor shall accept the unit price for such repairs listed in Exhibit "B" of this Agreement upon receipt of repaired radios and computer parts shipped by Contractor. Contractor shall waive the \$40.00 fee for examining radios or computer parts shipped by Director, HFD whenever the Director, HFD places an order for repairs based on the written report provided by Contractor. In the event, the Director, HFD does not approve repairs for radios or computer parts based on the written report of required repairs provided by Contractor, then City shall pay and Contractor shall accept the \$40.00 fee for examining the radios or computer parts shipped and for providing the written report on repairs required to the Director, HFD.

Subject to the allocation of funds detailed in Section IV, E, during years two, three, four

and five of this Agreement, Contractor shall repair in addition to Spectra Analog Radio Astro Digital and ASTRO Spectra Mobile Radios and computer parts listed in Exhibit "B" at the unit price listed for each year for such repairs in Exhibit "B".

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The City Purchasing Agent will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

C. Method of Payment - Payment for Services

Contractor shall submit separate invoices for repairs to radios or computer parts shipped by HFD to the Director, HFD. The Director, HFD shall pay on the basis of an invoice submitted by Contractor for repairs to equipment shipped from HFD and approved by the Director. The City shall pay Contractor within 30 days of the receipt and approval of the invoice. The Director, HPD shall pay advance Radio Repair Bank fees in the manner set out in Section IV, A, above.

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

E. Limit of Appropriation

(1) The City's duty to pay money to Contractor for any purpose under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$340,000.00 (\$290,000.00 for HPD and \$50,000.00 for HFD) to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies.

(3) The City makes a supplemental allocation by sending a notice signed by the Chief, Houston Police Department and the City Controller to Contractor and, where in excess of the amount specified in Paragraph (4) below, approved by motion or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the Chief, Houston Police Department, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this is \$_____.

SIGNED:

(Signature of the City Controller)
City Controller of the City

ESTED:

Signature of the Chief
HPD or HFD

(4) City Council delegates to the Chiefs, HPD & HFD the authority to approve up to \$1,000,000.00 (\$834,665.00 to HFD and \$325,335.00 to HPD) in supplemental allocations for the purpose of the Agreement without returning to Council.

(5) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for the services it provides. If Allocated Funds are exhausted, Contractor's only remedy is the suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for five years unless sooner terminated under this Agreement.

B. Renewals - Director's Option

If the Director advises the City Purchasing Agent to make a written request for renewal to the Contractor at least 30 days before expiration of the then-current term and if sufficient funds are

250,000.00 +
40,000.00 +
290,000.00 *

50,000.00 +
50,000.00 *

340,000.00 G*

250,000.00 +
75,335.00 +
325,335.00 ◇

834,665.00 +
1,160,000.00 *

1,160,000.00 G*

1,160,000.00 +
340,000.00 +
1,500,000.00 *

1,500,000.00 G*

allocated, then, upon expiration of the initial term, this Agreement is renewed for two successive one-year terms at rates negotiated by Contractor and the Directors of HPD & HFD.

C. Termination for Convenience by City

The City Purchasing Agent may terminate this Agreement at any time by giving 60 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall they pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV (A) unless the fees exceed the allocated funds remaining under this Agreement. Contractor shall repair HPD radios at the unit price for repair of such radios in force during the year in which the termination occurs to set off any advance payments made to Contractor. The total cost of repair services to be provided by Contractor shall equal the prepaid amount remaining after termination in the manner set out in Section IV, A of this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN

THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause

Either party may terminate its performance under this Agreement if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 days after Contractor's receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, the injured party may terminate its performance under this Agreement on the termination date. The Director shall act on behalf of the City to notify Contractor of a default and to effect termination.

VI. MISCELLANEOUS PROVISIONS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, and other acts of God, explosions, war, terrorist acts, riots, strikes, court orders, and acts of superior governmental or military authority.

2. This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible; and
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

4. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions,

covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

City agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings specifically refer to this Agreement; (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The City Purchasing Agent is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a

United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Captions

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the City Purchasing Agent, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The City Purchasing Agent is not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least four years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

City shall provide 30 days written notice prior to the inspection of any facility and will be responsible for its own costs associated with such inspection. Contractor shall restrict inspection of its facilities to normal business hours, to areas that are relevant to the performance of the Agreement, and to areas which Contractor does not consider confidential or proprietary. Contractor's representative shall accompany City employees or agents at all times. For audits of books or records, City may send a representative to a Contractor facility during normal business hours to conduct such limited review for the limited purpose of evaluating Contractor's performance of this Agreement, or at Customer's request Contractor will provide copies of specific documents to City for review. Contractor's books and records provided to City pursuant to this provision shall not be used, duplicated or disclosed to any other third party without the express written permission of Contractor. In no circumstances will Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary to Contractor.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the City Purchasing Agent.

O. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Product passes from Contractor to City upon delivery of equipment to City sites listed in Exhibit “A”, “Scope of Service.”.

P. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

Q. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

R. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent’s prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security

interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's prior written consent.

S. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

EXHIBIT "A"

SCOPE OF SERVICES

A. Contractor shall:

- (a) repair Motorola Spectra radios shipped by the Director, HPD to Contractor for routine repairs required due to normal wear and tear;
- (b) repair the radios according to the City Work Order or Letter of Authorization issued by the Director, HPD; and
- (c) ship repaired radios back to HPD at the following address:

Oliver Stokes, Houston Police Department
Communications Management Division
61 Reisner Compound, Houston, TX 77002.

- (i) Contractor is responsible for all radios sent for repairs while they are in Contractor's custody.
- (ii) Contractor shall pay all shipping charges for shipping repaired radios back to the City.
- (iii) **Response Time:**

Contractor and City agree that radios are essential to the daily operation of the Houston Police Department. Contractor's timely response to the Director of HPD's request for unscheduled repair services is critical to the deployment of Police cars. Contractor shall respond to a request for unscheduled services within five business days from the time Contractor receives a work order from the Director, HPD. Contractor shall accept work orders sent by the Director, HPD via facsimile. The time noted on the facsimile transmittal sheet shall begin the Department's notice to Contractor for unscheduled services.

(iv) **Response Time for Scheduled Repairs**

- (a) The Director, HPD shall overnight radios to Contractor for repairs. Contractor shall ship repaired radios back to the Director, HPD in five business days.
- (b) When the Director, HPD ships radios in bulk for repair to Contractor through a motor carrier, Contractor shall begin sending partial shipments of repaired radios to the Director, HPD in 15 business days from the date of receipt of the bulk shipment. Contractor and Director, HPD shall set the schedule for partial shipments of the rest of the repaired radios in the bulk shipment.

(v) **Documentation and Repair Reports**

Contractor shall send a report of repairs done and parts replaced along with repaired radios shipped to the Director, HPD.

(vi) **Acceptance Measures**

Director, HPD shall Accept a repaired radio shipped by Contractor when the radio meets the Houston Police Department's standard Bench Check Procedures including a check of the following items:

- (a) On switch, to test if the radio can be switched on
- (b) Modulation
- (c) Power Output
- (d) Frequency setting of Receiver and Transmitter
- (e) Sensitivity
- (f) Squelch threshold
- (g) Functionality of all Controls

(vii) **Correct or re-repair radios that fail Acceptance tests**

Contractor shall at no cost to the City correct or re-repair radios that fail the Director of HPD's Acceptance tests. The Director, HPD shall test repaired radios as detailed above for a 30-day Trial Period. If during the Trial Period, the tests conducted by the Director, HPD indicate that the radios did not meet the Houston Police Department's Bench Check Procedures, the Director, HPD shall ship the radios back to Contractor. Contractor will have 30 days to correct the problem(s), and ship the radios to the Director, HPD. The City will have an additional 15 days to retest the corrections. The City shall notify Contractor of any non-conformity between the radios and the Houston Police Department's Bench Check Procedures.

The City shall accept the radios when the radios, by the end of the 30-day Trial Period, operate in accordance with the Houston Police Department's Bench Check Procedures.

Contractor shall bear all shipping costs for re-shipping radios to and from Contractor's depot if the City uses the UPS shipping program.

B. HOUSTON FIRE DEPARTMENT (HFD) repair orders:

- 1) HFD shall ship radios and mobile data computer parts for repair to Contractor.
- 2) Contractor shall examine the radio or computer parts sent by HFD and provide HFD with a written estimate for the cost of repairs required.
- 3) HFD shall pay Contractor \$40.00 for examining each radio and computer part (or set of related parts) sent and providing HFD with a written report of repairs required for the radios or computer parts shipped to Contractor.
- 4) In the event HFD accepts Contractor's written report of repairs required and the cost

of such repairs, and places an order with Contractor to repair the radio or computer parts, then Contractor shall waive the \$40.00 for examining and providing a written report of repairs required and the cost of repairing the radio or computer parts at the unit costs for such repairs set out in Exhibit "B".

- 5) Contractor shall repair HFD radios and computer parts to an intrinsically safe standard. HFD shall identify and label all equipment that must be intrinsically safe for use in hazardous environments.
- 6) An intrinsically safe standard shall mean "a circuit in which any spark or thermal effect produced normally or in specified fault condition is incapable of causing ignition of a specified gas or vapor, in air in its most easily ignited concentration."
- 7) Contractor shall use the National Fire Protection Association test, NFPA 493-1975 to determine whether HFD circuits shipped for repairs to Contractor have been repaired to an intrinsically safe standard.

Timeline for Repairs

Non-Bulk/ Individual Items for Repair

- 8) In the event HFD places orders for the repair of radios or computers or both in quantities of 25 or less, Contractor shall repair the radios and computers within five business days of receipt of such a shipment.

Bulk Repair

- 9) In the event HFD places orders for the repair of radios or computers or both in quantities of 26 or more, Contractor shall repair the radios and computers within 10 business days of receipt of such a shipment.

Contact Person for the Houston Fire Department

- 10) Contractor shall ship all repaired radios and computers from HFD to:
- Don McMillin, Asst. Communication Supervisor
- Houston Fire Department Communication Management
- 1205 Dart Street, Houston, TX 77007
- Phone: (713) 247 - 8705
- 11) Contractor shall bear all HFD's shipping charges for shipping radios and computers for repair to and from Contractor's repair facility if HFD uses UPS shipping facility

CONDITIONS THAT APPLY TO BOTH HPD AND HFD REPAIRS:

Excluded Repairs: This Agreement does not include:

- 12) (a) repair or maintenance of items that are consumed in the normal operation of the equipment, such as batteries or magnetic tapes;
- (b) repair or maintenance of accessories, belt clips, battery chargers, custom or special products, modified units;
- © repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner or multiplier;
- (d) upgrading or reprogramming equipment or software;
- (e) any transmission such as telephone lines, computer network, the internet or the worldwide web, or for equipment malfunction caused by such transmission medium;
- (f) repair of damage caused by misuse, abuse, abnormal operation and operator error;
- (g) repair or replacement of parts not originally installed by Contractor;
- (h) repair to return a radio to the same level of operation as at the time of initial

purchase from Contractor.

- (i) the repair or replacement of equipment that has become defective or damaged from use in other than normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events
- (j) equipment that in Contractor's reasonable opinion, be properly or economically serviced for any reason, Contractor shall notify City and in consultation with City remove such equipment for services under this Agreement.

Contractor's Conditions for providing repairs and maintenance:

- 13) During the term of this Agreement, if City purchases additional radios or mobile data computers from Contractor, then, subject to the allocation of funds, City has the option to add the new equipment to this Agreement once the warranty for such equipment expires at rates negotiated by Contractor and the City.
- 14) Contractor does not grant City directly or by implication, estoppel, or otherwise, any ownership right or license under any Contractor patent, copyright, trade secret, or other intellectual property including any intellectual property created as a result of or related to the repair or maintenance services performed under this Agreement.

City's Responsibilities:

- 15) City is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by such

agencies. Neither Contractor nor any of its employees is an agent or representative of City in any governmental matters.

- 16) City agrees to promptly notify Contractor of any failure of equipment repaired or serviced under this Agreement. Contractor shall respond to City's notification in a manner consistent with the level of service purchased for such equipment under this Agreement.
- 17) City will provide a complete serial and model number list of the radios and computer parts sent for repair.
- 18) City will notify Contractor in writing when any radios or computer parts are lost, damaged, stolen or taken out of service.

City of Houston Depot Contract

Equipment	*Depot Repairs - Year One	**Year Two	**Year Three	**Year Four	**Year Five
Spectra Analog Radio	\$305.00/ea.	\$320.00/ea.	\$336.00/ea.	\$353.00/ea.	\$370.00/ea.
Astro Digital Radio / ASTRO Spectra Mobile	\$375.00/ea.	\$394.00/ea.	\$414.00/ea.	\$435.00/ea.	\$457.00/ea.
Forte Power Amp	\$305.00/ea.	\$320.00/ea.	\$336.00/ea.	\$353.00/ea.	\$370.00/ea.
MW520 CPU (with or without radio)	\$545.00/ea.	\$572.00/ea.	\$600.00/ea.	\$630.00/ea.	\$662.00/ea.
MW520 350 NIT STD/Touch Display	\$375.00/ea.	\$394.00/ea.	\$414.00/ea.	\$435.00/ea.	\$457.00/ea.
MW520 1000/1200 NIT STD/Touch Display	\$480.00/ea.	\$504.00/ea.	\$529.00/ea.	\$555.00/ea.	\$583.00/ea.
MW800 CPU (with or without radio)	\$450.00/ea.	\$473.00/ea.	\$497.00/ea.	\$522.00/ea.	\$548.00/ea.
MW800 Display	\$400.00/ea.	\$420.00/ea.	\$441.00/ea.	\$463.00/ea.	\$486.00/ea.
MW800 Keyboard	\$ 80.00/ea.	\$85.00/ea.	\$ 89.00/ea.	\$ 94.00/ea.	\$ 99.00/ea.
MW800 (CPU, Display & Keyboard)	\$930.00/ea.	\$976.00/ea.	\$1,025.00/ea.	\$1,076.00/ea.	\$1,130.00/ea.
VRM 650	\$375.00/ea.	\$394.00/ea.	\$414.00/ea.	\$435.00/ea.	\$457.00/ea.
VRM 850	\$365.00/ea.	\$383.00/ea.	\$402.00/ea.	\$422.00/ea.	\$443.00/ea.
XTS3500	\$350.00/ea.	\$368.00/ea.	\$386.00/ea.	\$405.00/ea.	\$425.00/ea.
XTS5000	\$350.00/ea.	\$368.00/ea.	\$386.00/ea.	\$405.00/ea.	\$425.00/ea.
ML900 Laptop	covered under standard warranty (years 1-3)				
				\$365.00/ea.	\$425.00/ea.

*Flat Rate Pricing effective for 12 months; subject to one time annual price increase.

**Flat Rate Pricing indicates "Not To Exceed" Prices

***Discounted prices reflect the representative discounts applied when that service is provided through a Radio Repair Bank that has been purchased in advance (\$25,000-size Bank in this case). Under a Radio Repair Bank, services are charged against the block at the single repair rate, and the cost of the Radio Repair Bank is discounted (10% in the case of the \$25,000 Radio Repair Bank). The Customer receives service value in the amount but pays only \$22,500 for it (10% discount).

EXHIBIT "B"

CITY OF HOUSTON DEPOT CONTRACT UNIT REPAIR COSTS

EXHIBIT "C"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and

reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Engineer)

have authority to bind Engineer with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Engineer is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Engineer that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Engineers (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Engineer that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Engineer Name

Signature

Title

EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
 (Name) (Print/Type) (Title)
 _____ (Engineer)
 (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 19____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
 Initials The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
 Initials Drug Detection and Deterrence Procedures for Engineers, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
 Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
 Initials performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

_____ From _____ to _____ the following test has occurred
 Initials (Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

_____ Any employee who tested positive was immediately removed from the City worksite
 Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
 Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

 (Date)

 (Typed or Printed Name)

 (Signature)

 (Title)

EXHIBIT "F"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

(Name)

(Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved

in performing _____
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)